



# CITY OF EDMONDS

121 5TH AVENUE NORTH • Edmonds, WA 98020 • (425) 771-0220 • FAX (425) 771-0221  
HEARING EXAMINER

GARY HAAKENSON  
MAYOR

In the Matter of the Application of	)	NO. PLN-2010-0049
	)	
Mark Jackson	)	
	)	
For a Variance	)	FINDINGS, CONCLUSIONS,
_____	)	AND DECISION

## SUMMARY OF DECISION

The request for a variance from the street and side yard setback standards of the Single-Family Residential (RS-12) zone to allow additions onto the living room and garage of a legally nonconforming residence at 1101 - 12th Avenue North in Edmonds, Washington is **DENIED**.

## SUMMARY OF RECORD

### Request:

Mark Jackson (Applicant) requested a variance from the street and side yard setback standards of the Single-Family Residential (RS-12) zone. The variance was sought to allow additions onto the living room and garage of a legally nonconforming residence at 1101 - 12th Avenue North in Edmonds, Washington.

### Hearing Date:

The Edmonds Hearing Examiner conducted an open record hearing on the request on August 19, 2010. The Hearing Examiner conducted a site visit on August 23, 2010, driving by the subject property and observing it in the context of the surrounding residential development.

### Testimony:

At the open record hearing the following individuals presented testimony under oath:

1. Kernen Lien, Planner, City of Edmonds
2. Mark Jackson, Applicant
3. Al Rutledge
4. Eloise Sheldon

### Exhibits:

At the open record hearing the following exhibits were admitted into the record:

1. Planning Division Staff Report, dated August 10, 2010
2. Land Use Application
3. Applicant Narrative and Criteria Statement
4. Site Plan

*Findings, Conclusions, and Decision*  
City of Edmonds Hearing Examiner  
Jackson Variance, No. PLN-2010-0049

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5. Site Photos
6. Zoning and Vicinity Map
7. Short Plat S-27-66
8. Lot Line Adjustment S-29-87
9. Notice affidavits
10. Technical Committee Review Comments
11. Critical Area CRA20100007
12. Neighborhood Residences and Garages Comparison, prepared by Planning Staff
13. Affidavit of Publication
14. Correspondence from Ron and Marilyn Wirtz, dated August 6, 2010
15. Correspondence from John and Lee Sheldon, dated August 18, 2010
16. Correspondence from Dr. and Mrs. Dana Blackham, dated August 18, 2010

Upon consideration of the testimony and exhibits submitted, the Hearing Examiner enters the following findings and conclusions:

### FINDINGS

1. The Applicant requested a variance from the street and side yard setback standards of the Single-Family Residential (RS-12) zone to allow additions onto the living room and garage of a legally nonconforming residence at 1101 - 12th Avenue North in Edmonds, Washington.<sup>1</sup> *Exhibit 1, pages 1-2; Exhibits 2 and 3.*
2. The RS-12 zone requires a minimum 25-foot setback from the street and 10-foot side setbacks. *Edmonds Community Development Code (ECDC) 16.20.030.*
3. The existing residence was built in 1962, at which time the RS-12 zone required a 7.5-foot side setback. In 1962, the eastern wall of the existing garage was placed eight feet one inch from the eastern lot boundary.<sup>2</sup> In the early 1970s, the development standards of the RS-12 zone changed, requiring a 10-foot side setback. Because it complied with the development standards in effect at the time of construction, the existing residence became legally nonconforming when the zoning regulations changed. *Exhibit 1, page 2; Lien Testimony.*
4. In 1966, the parent parcel containing the existing residence was subdivided into four lots under File No. S-27-66. The existing residence was retained in place on a five-sided parcel totaling 19,850 square feet, with the north and west lot lines that were not perpendicular to the house. Subdivision S-27-66 reserved an access easement along the subject property's north lot line; it did not alter the relationship between the existing

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<sup>1</sup> The subject property is known as Tax Parcel Number 00548900001911. *Exhibit 1, page 1.*

<sup>2</sup> The Staff Report states the garage is eight feet eleven inches from the eastern lot line, and the Applicant's materials state the garage is eight feet one inch from the eastern lot line. *Exhibit 1, page 2; Exhibit 3.* In order for a six-inch additional encroachment to be necessary to result in the desired final setback of seven feet seven inches (as stated by the Applicant), the existing setback must equal eight feet one inch. The uncertainty regarding the existing setback does not prejudice the position of any party.

residence and the eastern side lot line. *Exhibit 1, page 2; Lien Testimony; Exhibit 7; see Exhibit 7, page 3 of 11.*

5. The boundaries of the subject property were again amended in 1987 through a boundary line adjustment (BLA, File No. S-29-87). The BLA altered the western and northwestern lot lines of the subject property, reducing its total area to 14,542 square feet. The BLA did not impact the relationship between the existing residence and the eastern lot line. *Exhibit 1, page 2; Exhibit 8.*
6. There is a storage structure (an enclosed garden shed) that runs the length of the residence between the garage and the eastern lot line, located in the required setback. There is no building permit on record for the structure, and it is not known when it was built. Whether the storage structure is legally nonconforming or illegally built is not relevant to the instant application for variance. *Exhibit 1, pages 4-5; Lien Testimony; Exhibit 5, page 1, photos 2277, 2278, and 2279.*
7. The Applicant purchased the property in 2005 after it had settled in its current configuration and has made no changes to the lot boundaries. *Jackson Testimony; Exhibit 3.*
8. Surrounding properties share the site's RS-12 zoning designation. Most of the homes in the vicinity are oriented to maximize views of Puget Sound and the Olympic Mountains, visible to the west as a result of the surrounding topography. *Exhibit 1, page 3; Site Visit.*
9. The subject property sits on a large west-facing hill, with grades that slope steeply from an elevation of 294 feet in the northeast corner to 260 feet in the southwest corner. The existing residence sits on a flat area, but the parcel drops steeply (approximately 50%) to the south and west of the residence. *Exhibit 1, page 3; Site visit.*
10. The Applicant desires to build additions onto the living room and the garage of the existing residence. As proposed, the addition to the living room would extend to the north. The proposed garage addition would extend the garage to the north and to the east, extending six inches closer to the eastern lot line. Both additions are proposed on the level part of the property. Neither, if approved, would require the removal of mature, significant vegetation. *Exhibits 2, 3, and 4; Exhibit 1, page 4.*
11. The existing garage, which encroaches into the eastern side setback, is 26 feet long and 22 feet wide. The proposed eastern expansion, if approved, would intrude a total of two feet five inches into the required 10-foot side setback, leaving a side setback of seven feet seven inches. It would extend the garage over the existing foundation, which the current structure does not completely cover. *Exhibit 3; Jackson Testimony; Exhibit 5, page 1, photos 2277 and 2280.*
12. The existing living room is 24 feet long and 18 feet wide; its long wall faces the western view. In order to expand the living room to "be more consistent with the homes in the neighborhood and to make better use of the western views of Puget Sound and the

Olympic Peninsula", the Applicant desires to extend the living room to the north, leaving a street setback of 13 feet from 199th Street SW. *Exhibit 3; Jackson Testimony.*

13. The Applicant's residence has a footprint of 1930 square feet, and a total floor area of 3,060 square feet. It is described as a single-story home with a completed daylight basement. It has a two-car garage of approximately 572 square feet, and there is space for additional off-street parking outside the garage on the lot. *Exhibit 1, page 5; Exhibit 3; Exhibit 5, page 2; Exhibit 12.*
14. Snohomish County Assessor information compiled by the Planning Department shows a survey of 21 homes in the immediate vicinity have an average floor area of 3,571 square feet and garages averaging 541 square feet.<sup>3</sup> The Applicant's existing is garage is larger than 14 of the 21 garages in the neighborhood for which Assessor data was provided in the record, and the existing residence (excluding garage) is larger than seven of the 21 surrounding residences. *Exhibit 12.*
15. There is flat, developable area adjacent to the garage and the living room that could contain expansions of the existing structure without encroaching into required setbacks from the side or street. *Exhibit 4; Jackson Testimony; Lien Testimony; Exhibit 1, page 7.*
16. In support of his request, the Applicant argued that the west- and south-facing slopes significantly limit the flat, useable area of his property. He argued that the previous boundary adjustments of his parcel had left an irregularly shaped lot and had left final lot lines not perpendicular to the pre-existing residence. He argued that his lot/residence orientation contrasts with that of surrounding homes, which he asserted are sited on their lots in an orientation that allows for future expansion without affecting setbacks. He argued an expanded garage would be more consistent with the sizes of the surrounding garages, and that the expanded living room would leave his total floor area more consistent with the square footage of surrounding residences. He argued that the improved views would "likely also increase the overall value of [the] home." *Exhibit 3, pages 2-4; Jackson Testimony.*
17. In his testimony and written materials, the Applicant argued that no party would be harmed if he were allowed to expand his residence as desired into the street and side yard setbacks. *Jackson Testimony; Exhibit 3, page 5.*
18. Planning Staff concurred that there would be no detriment to the public health, safety, and welfare. *Exhibit 1, page 7.* However, Staff disagreed that special circumstances could be found to arise from the previous subdivision and also disagreed that the requested variances were the minimum necessary for the Applicant to enjoy the same rights as surrounding residential owners. Staff noted that the residence could be expanded without resorting to variance, and also that the existing residence and garage are of sizes comparable to those of surrounding homes. Based on the position that the

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<sup>3</sup> These averaged figures were calculated based on the square footages of the 21 residences depicted in Exhibit 12, which include the Applicant's residence.

Applicant already enjoys the rights allowed to other RS-12 zoned properties, Staff opined that the variances are not necessary to allow the Applicant the same rights as his neighbors. The City recommended denial of the application. *Exhibit 1, pages 7-8; Lien Testimony.*

19. Notice of Application and Public Hearing were posted on-site, published in *The Herald*, and mailed to surrounding property owners within 300 feet of the site. *Exhibit 1, page 2; Exhibit 9.*
20. The City received several comments in favor of the application, and one in opposition. *Exhibits 14, 15, and 16; Sheldon Testimony.* The opposing letter asserted that the requested variances would interfere with the commenting neighbors' view. *Exhibit 16.* Other public comment offered encouraged the Applicant to notify Snohomish County regarding any changes to property values as a result of the outcome of the hearing. *Rutledge Testimony.*

## CONCLUSIONS

### Jurisdiction:

The Hearing Examiner has jurisdiction to hear and decide variance requests pursuant to ECDC 20.01.003.A and .C and ECDC 20.85.020.

### Criteria for Review:

Pursuant to ECDC 20.85.010, no variance may be approved unless all of the following findings can be made:

A. Special Circumstances. That, because of special circumstances relating to the property, the strict enforcement of the zoning ordinance would deprive the owner of use rights and privileges permitted to other properties in the vicinity with the same zoning.

1. Special circumstances include the size, shape, topography, location or surroundings of the property, public necessity as of public structures and uses as set forth in ECDC 17.00.030 and environmental factors such as vegetation, streams, ponds and wildlife habitats.

2. Special circumstances should not be predicated upon any factor personal to the owner such as age or disability, extra expense which may be necessary to comply with the zoning ordinance, the ability to secure a scenic view, the ability to make more profitable use of the property, nor any factor resulting from the action of the owner or any past owner of the same property;

B. Special Privilege. That the approval of the variance would not be a grant of special privilege to the property in comparison with the limitations upon other properties in the vicinity with the same zoning;

C. Comprehensive Plan. That the approval of the variance will be consistent with the comprehensive plan;

D. Zoning Ordinance. That the approval of the variance will be consistent with the purposes of the zoning ordinance and the zone district in which the property is located;

E. Not Detrimental. That the variance as approved or conditionally approved will not be significantly detrimental to the public health, safety and welfare or injurious to the property or improvements in the vicinity and same zone;

F. Minimum Variance. That the approved variance is the minimum necessary to allow the owner the rights enjoyed by other properties in the vicinity with the same zoning.

Conclusions Based on Findings:

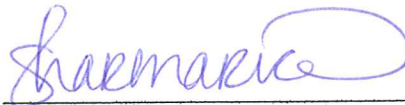
1. No special circumstances that may be recognized under the City Code give rise to the requested variances. While the subject property is significantly constrained by topography, the slopes on and near the site are not the bases for the requested variances to setback requirements. There is room to expand the structure in the flat portions of the site, or vertically, without further encroachment into setbacks. The Applicant's five-sided lot and legally nonconforming garage placement cannot be considered when reaching the determination as to special circumstances, per ECDC 20.85.010.A.2, as both are the result of actions of former owners of the parcel. Likewise, the Applicant's stated intentions of improving his views and increasing his property value cannot justify a variance. *Findings 3, 4, 5, 11, 12, 15, 16, and 18.*
2. The application does not demonstrate that the requested variances are the minimum necessary to allow the Applicant to enjoy the same rights enjoyed by other property owners in the RS-12 zone. The existing garage is larger than 14 of 21 surrounding properties, and additional off-street parking is available on-site. The existing residence is larger than seven comparable surrounding residences, being only 511 square feet smaller than the average of the sample provided. More significantly, the Applicant could make substantial increases in his square footage (and his views) without resorting to variance from any zoning standard. *Findings 13, 14, and 15.*
3. Because all variance criteria must be satisfied and the two previously discussed were not satisfied, it is not necessary to review the remaining criteria.
4. ECDC 17.40.020.B expressly prohibits expansion of legally nonconforming structures in any way that increases the nonconformity. The Applicant's residence is legally nonconforming due to its encroachment into the eastern side setback. Both of the requested setback variances would increase the existing nonconformity. *Findings 3, 11, and 12.*

### DECISION

Based on the preceding findings and conclusions, the request for a variance from the street and side yard setback standards of the Single-Family Residential (RS-12) zone to allow additions onto the living room and garage of a legally nonconforming residence at 1101 - 12th Avenue North in Edmonds, Washington is **DENIED**.

DECIDED September 1, 2010.

Toweill Rice Taylor LLC  
City of Edmonds Hearing Examiners  
By:



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Sharon A. Rice





## CITY OF EDMONDS

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HEARING EXAMINER

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MAYOR

### RECONSIDERATION AND APPEAL

The following is a summary of the deadlines and procedures for filing requests for reconsideration and appeals. Any person wishing to file or respond to a request for reconsideration or an appeal should consult the relevant ordinances and/or contact the Planning Division of the Development Services Department for further procedural information.

### REQUEST FOR RECONSIDERATION

Pursuant to ECDC 20.06.010, requests for reconsideration may be filed with the City Planning Director within 10 calendar days of the Hearing Examiner's decision. The filing deadline is 4:30 p.m. on the last business day of the reconsideration period. Only parties of record (i.e., the applicant, any person who testified at the open record hearing on the application, any person who individually submitted written comments on the application, or the City of Edmonds) may file a request for reconsideration. The grounds for reconsideration are limited to errors of procedure, errors of law or fact, errors of judgment, or the discovery of new evidence that was not known and could not in the exercise of reasonable diligence have been discovered prior to hearing. Reconsideration requests must contain the information specified in ECDC 20.06.010(D) and be accompanied by the required filing fee.

### APPEALS

Pursuant to ECDC 20.01.003(C), appeals of Hearing Examiner decisions on variances shall be made to the City Council, which body conducts a closed record appeal hearing on the appeal pursuant to the provisions of ECDC 20.07. Appeals to the City Council must be filed within 14 days of the date the Hearing Examiner decision is issued. The appeal must be submitted by 4:30 pm on the last business day of the appeal period. The appeal must contain the information specified in ECDC 20.07.004(D) and be accompanied by the required filing fee. Filing a request for reconsideration is not a prerequisite to filing an appeal.

### EFFECT OF REQUEST FOR RECONSIDERATION ON APPEAL DEADLINE

The timely filing of a request for reconsideration stays the Hearing Examiner's decision until such time that the Hearing Examiner issues a decision on reconsideration, and any judicial appeal must be filed within 21 days of the decision on reconsideration.

### LAPSE OF APPROVAL

Section 20.05.020(C) of the ECDC states: "Time Limit. The approved variance must be acted on by the owner within one year from the date of approval or the variance shall expire and be null and void, unless the owner files an application for an extension of time before the expiration and the city approves the application."

### NOTICE TO COUNTY ASSESSOR

The property owner may, as a result of the decision rendered by the Hearing Examiner, request a change in the valuation of the property by the Snohomish County Assessor's Office.





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HEARING EXAMINER

GARY HAAKENSON  
MAYOR

## OFFICE OF THE HEARING EXAMINER CITY OF EDMONDS, WASHINGTON

Regarding the request of )  
 )  
Mark Jackson ) Case No. PLN-2010-0049  
 )  
 )  
For a Variance ) **DECLARATION OF SERVICE**  
 )  
\_\_\_\_\_ )

I, Sharon A. Rice, the undersigned, do hereby declare:

1. That I am a partner in the firm of Toweill Rice Taylor LLC, which maintains a professional services agreement with the City of Edmonds, Washington for the provision of Hearing Examiner services, and make this declaration in that capacity; and that I am now and at all times herein mentioned have been a citizen of the United States, a resident of the State of Washington, over the age of eighteen (18), and competent to be a witness and make service herein; and that on September 1, 2010 I served a copy of the decision in case PLN-2010-0049 upon the following individuals at the addresses below by first class US Mail:

Mark Jackson  
1101 - 12th Avenue North  
Edmonds, WA 98020

Edmonds Development Services  
121 Fifth Avenue North, First Floor  
Edmonds, WA 98020

Clerk of the Edmonds City Council  
121 Fifth Avenue North, First Floor  
Edmonds, WA 98020

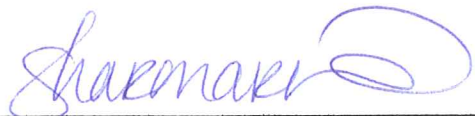
John and Lee Sheldon  
1025 - 12th Avenue North  
Edmonds, WA 98020

Alvin Rutledge  
7101 Lake Ballinger Way  
Edmonds, WA 98026

Ron & Marilyn Wirtz  
1031 - 12th Avenue North  
Edmonds, WA 98020

Dr. and Mrs. Dana Blackham  
1100 - 12th Avenue North  
Edmonds, WA 98020

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, this 1st day of September 2010 at Edmonds, Washington.

  
\_\_\_\_\_  
Sharon A. Rice  
Toweill Rice Taylor LLC